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128. 464

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887. 8

No. ~~199.~~ 16.

CLARENCE P. HUNT, APPELLANT,

vs.

SALLIE S. BLACKBURN, CHARLES B. BLACKBURN AND W. P. SMITH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 13, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 15, 1887.

a UNITED STATES OF AMERICA, } ss:
Eastern District of Arkansas, }

Be it remembered that at a regular term of the district court of the United States for the eastern district of Arkansas, begun and holden at the Federal court-room, in the city of Helena, on the 2d Monday in October, A. D. 1881, the same being the 10th day of said month, there was present and presiding Hon. Henry C. Caldwell, judge of said court; James Torrens, marshal of said district, and Samuel P. Clark, clerk of said court, when among other proceedings had were the following, on the 12th day of October, 1881, a day of said term, viz:

CLARENCE P. HUNT
vs.
SALLIE S. BLACKBURN, CHARLES B. BLACKBURN, and W. P. SMITH.

1 *Bill in Equity.*

In the U. S. D. Court at Helena, Arkansas.

CLARENCE P. HUNT, a Citizen of Shelby County, Tennessee,
vs.
SALLIE S. BLACKBURN, CHAS. B. BLACKBURN, W. P. SMITH, Citizens of Laconia, Desha County, Arkansas.

Complainant shows to the court that on the 24th day of April, 1868, C. B. Shepherd sold and by title bond bound himself, in writing, to convey to defendant, Sallie S. Blackburn (then Sallie S. Buck, wife of Walter A. Buck) one-half of the plantation on which he then resided, near Laconia, Desha Co., Arkansas, consisting of the northeast fr'l part (south of Deep Bayou) and the southeast fr'l q'r of section 20 (193 acres), the east half of the southwest quarter of section 20, the west fr'l half of section 21, the southwest quarter of section 28, the northeast quarter and the east half of the northwest quarter of section 29, all in township 7 S., range 1 east, containing 973 acres, more or less.

2 That in said title bond it was stipulated that as soon as practicable they were to divide said plantation so that each should have half the improved land, the said Sallie S. an undivided half of the gin-house and fixtures then on the place and to be allowed to remove three of the cabins or negro quarters and place them on her part of the land, while Shepherd was to retain the dwelling-house and other outhouses and improvements, which plan contemplated the tending of what was known as the upper half of the tract, including the improvements, except as above stated, by Shepherd, and the lower half by said Sallie S.

It was also stipulated that as soon as divided said Shepard should convey to her in fee the part so apportioned, by which agreement and contract in writing the said Sallie S. became the absolute owner of the lower half of said plantation, and she was at once, pursuant thereto, placed in possession thereof and held it accordingly.

That a month or two afterward the said Shepard sold the upper half of said lands to W. A. Buck, the husband of said Sallie S., and

executed to him a writing to that effect, and early the next year
3 (Jan'y, 1869), said W. A. Buck sold to J. S. Drake and caused deeds to be made from Shepard to himself and wife, and from himself and wife to Drake, the wife, Sallie S., having executed the deed, but in the certificate of acknowledgment it is specified that she relinquished "dower" therein, the purpose and intent and the fact being that Drake purchased, through W. A. Buck, the half of the land that Shepard did not sell to Sallie S.; that said Sallie S. was aware of the negotiation and of the purchase by Drake of her husband's half, and united in what she supposed was a valid conveyance in fee of an undivided half of said lands.

That said Drake, being a non-resident of the State, cultivated the property in partnership with said Buck & wife, and allowed them to use the improvements, he occupying the dwelling with them when on the premises.

That about the begin-ing of the year 1872 Mr. J. S. Winifry, of Tennessee, went to the place to examine it with a view of purchasing her half interest, and was shown the property by defendant, Sallie S., or her agent. They failed to agree, but, with her consent and approval and without any intimation from her of any
4 question of title, he purchased of Drake his half of the property for a valuable consideration. It was conveyed to him by Drake, and he was accordingly placed in possession, and for a year or two cultivated it with her, whose husband had died in the meantime and who subsequently intermarried with Ed. Blackburn, who died within a year or two.

That upon the death of her first husband the said Sallie S. qualified as executrix of his will, and some question having been raised by his creditors and heirs whether or not one-fourth of said lands were part of his estate on the theory that himself and wife had each conveyed a half interest and that there was no survivorship between them, she, the said Sallie S., caused a bill to be filed on the chancery side of the Desha circuit court, making his heir-at-law and said Drake and Winifry parties defendant, alleging that in fact her husband had purchased, owned, sold, and conveyed to Drake, who had conveyed to Winifry an undivided half of said tract of land, and that she had purchased, owned, and still held the other half, and that it, and no more, was hers, and praying a decree settling the rights of parties accordingly, which cause proceeded to hearing, the parties
5 having been only brought in, and on final hearing the court decreed that the title to her for an undivided half of said tract was absolute, valid, and binding, and the title to Drake or Winfrey to the other half was equally valid and binding, which decree is still in force, a duly certified copy of which is made Exhibit A as a part hereof, from which the several matters hereinbefore stated are shown. The deeds from Buck & wife to Drake and from Drake and Winefrey have been procured and are made part hereof as Exhibits A No. 2 and A No. 3.

That some months after the purchase by Winfrey from Drake he discovered that the southeast quarter of section 20 had, by mistake, been omitted from the deed of conveyance to him as well as to his

grantor, and filed a bill in the chancery court at Memphis, Tennessee to compel a re-cis-ion of the contract of sale.

That at the same time the said Sallie S. and Drake filed a bill in the circuit court of Desha county, Arkansas, to correct the omission and perfect the deed, the said Winfrey, among others, being
6 made a defendant in the bill, it was alleged that the said Sallie S. owned an undivided half by reason of said purchases, and that Winfrey owned the remainder, which cause was heard, decided, and an appeal — to the supreme court of the State; that court decreed a correction and reformation of said deed and quieted the respective titles of said Sallie S. and Winfrey to an undivided half of said tract of land. The opinion of the court is reported in the case of Blackburn & Drake *vs.* A. W. Randolph *et als.* of the 33d Arkansas Reports, to which reference is made to save the expense of a copy, but if required the decree will be duly established as part hereof, marked B.

From all of which it will be seen that the said Sallie S. has committed herself in every way to the validity of Winifrey's title, and that she is estopped to deny it.

That while Winifry was in possession of said half interest he, during part of the time, used the lower half of said tract, while the said Sallie S. used the upper half. Why or on what terms
7 this was done is to complainant unknown; but, becoming involved, he abandoned the place, returned to his home in Tennessee, and filed a voluntary petition in bankruptcy, was adjudged a bankrupt, and in due time was, by the United States district court for middle Tennessee, discharged from all his indebtedness. Among other assets of his estate the half of the above tract of land was scheduled and sold under decree of said court, at which sale W. G. Weatherford became the purchaser. The original deeds of conveyance from John Lawrence, register in bankruptcy, to Harvey Harrison, assignee of Winfrey, and from the latter to Weatherford are exhibited, marked C & D, as part hereof and full evidence title in the latter.

That while these matters were pending Drake, the vendor of Winfrey, became embarrassed, he having never been paid the purchase-money for said land; and complainant, on the advice of counsel, loaned him between two and three thousand dollars in money on the faith of his title to said land or of his right to recover the purchase-money therefor, which, it was agreed, should
8 be applied to pay the above indebtedness; but that when the interest of Winfrey became subject to sale under the bankrupt proceedings he, under advice of counsel, caused the purchase of said interest, and upon payment of the fees of counsel in that case received a deed of conveyance from him, the said Weatherford, which, with the consent of said Drake, was accepted in satisfaction of the indebtedness of Drake to him, and he is therefore a purchaser for value of said property, and holds under a title that said Sallie S. is estopped to deny. He files as an exhibit, marked "E," the original deed, dated June 11th, 1880, from Weatherford to himself, under which he avers title in himself to one-half of said real estate,

which half, he submits, is, in equity, the upper half, including the dwelling-house and improvements originally sold by Shipherd to W. A. Buck; but whether the upper half or the lower half, under some agreement or partition with Winfrey, of which he knows nothing, or an undivided half of the whole is a question for the consideration of and adjudication by the courts; that, prior to the proceedings above mentioned, and with a view to his own protec-
9 tion he, finding that an undivided half of said lands had been sold for taxes, purchased the interest evidenced by the clerk's certificates of sale, and caused a deed to be executed by the clerk of the Desha circuit court to himself therefor, whereby he insists that he became the owner in fee of said lands, and exhibits as part hereof the original deed to himself marked "F."

That since his said purchases he has several times applied to said Sallie S. for the partition of said property or for some arrangement or understanding by which he could peacefully and amicably get his own, and has offered, as a means of avoiding litigation, to allow her some advantage in the adjustment, but that she sometimes declines to reply to his overtures, at others she offers much less than he is entitled to, and sometimes intimates rather than asserts that she owns the entire tract and may decline to give up any, or only such as she deems appropriate; while again she states that she is only cultivating the upper and part of the lower half; that the remainder is and for years has been unoccupied and can now
10 be taken by complainant if he wishes, and that he should be content with that; but that she absolutely declines any adjustment except such as she may dictate, and that she has made no offer for an equitable partition or adjustment and he is driven either to accept her own terms, to forcibly assert his rights against a lady, or to apply to the courts for relief.

He understands and charges that the valuable gin-house has been burned, and that she has disposed of the engine and machinery, including a saw-mill, for a horse-power gin and machinery which she has erected on the upper part of the premises and of which she has had the use for some time; that she has removed the fencing from the lower half and built it around the upper half and part of the lower half of said place, and that the lower half has been allowed to grow up or become set in Bermuda grass, greatly injuring the value of said lower half, while she has kept the upper half in good condition, although he applied to her in 1879, in 1880, and in 1881 stating that he desired to use one-half of the property, and would
11 have done so but for her objection to the contrary; that some years since she sold to her stepson, L. H. Buck, 4 acres of the most valuable part of said tract and executed to him a deed in fee therefor, upon which he erected improvements worth several hundred dollars, which land and improvements Buck has since sold to defendant Smith.

He charges that both Buck & Smith each at the time of his purchase knew that she owned only one-half of said tract, but as this was part of the lower half of the tract which she originally purchased from Shepherd he concedes, upon the theory heretofore

stated, that it was hers and she might convey it, but only upon the theory that the upper half belongs to complainant.

He submits that said Smith holds that property subject to such disposition as may be made of the entire tract.

He shows that defendant, Chas. B. Blackburn, is and for several years past has been leasing from her and using said property and accounting to her therefor, and, while he has refrained from using the entire place, he has steadily advised and influenced her
12 to disregard complainant's rights in the premises and to refuse to make terms with or to account to him in the matter; that he was her nephew and business adviser and well knew her rights and liabilities in the premises and acted with full knowledge of his own rights and obligations, and that he is now liable to account to complainant for one-half of the rental value of said property during the entire time he has been in possession of it, which value complainant does not know, but submits that it is a proper subject of account, and, to avoid a multiplicity of suits, should be inquired into and disposed of in this suit.

The premises considered, the complainant prays that the parties named as such be made defendants and required to answer under oath the several matters relating to themselves, respectively, as charged herein, and upon final hearing that his title to the upper half of said property, or to the lower half if partition is shown to have been made in that way, or to one undivided half of said tract if the court shall find that to be his equity, be declared and
13 quieted, and for a decree of partition and for the appointment of commissioners for the purpose, or for a sale if partition cannot be equitably made, and for all proper accounts and the adjustment of all equities and the devestition of any improper titles and the removal of any clouds upon title and for any other general or special relief as to the court shall seem usual.

And he will ever pray, &c.

WEATHERFORD & ESTIS,
For Compl't.

We acknowle-ge ourselves liable for all costs that may accrue in the above-entitled cause now about to be instituted in U. S. court at Helena, Ark.

June 24, 1881.

WEATHERFORD & ESTIS.

Endorsed: Filed ——. Writ issued June 25th, 1881. Samuel J. Clark, clerk.

EXHIBIT A, referred to in complaint.

14 Pleas before the Hon. Wm. H. Clayton, judge of the 11th judicial circuit, in chancery, on the 12th day of September, 1873.

Complaint in Equity.

In the Desha Circuit Court. April Term, 1872.

S. S. BUCK, Plaintiff, *vs.* CHAS. BUCK *et al.*, Defendants.

SALLIE S. BUCK

vs.

CHARLES BUCK, LEWIS H. BUCK, WALTER OTIS BUCK, LETITIA Vaneter and Her Husband, W. Vaneter; Mary Buck, Lulu Buck, Frank Buck, Belle Buck, & William Buck, Children and Heirs-at-law of W. A. Buck, dec'd; C. R. Shepard, J. S. Drake, James Murphy, & J. C. Murphy.

Complainant states that on the 24th day of April, 1868, she purchased of defendant, C. R. Shepard, one-half of the real estate or plantation on which he then resided, near Laconia, Desha county, Arkansas, consisting of the N. E. fr'l ¼ sec. 20, E. ½ S. W. sec. 20, W. fr'l ½ sec. 21, N. W. ¼ 28, N. E. ¼ 29, E. ½ N. W. 29, T. 7 S., R.
15 1 E., containing 973 acres; that he executed his agreement in writing to that effect, which is made part of this complaint as Exhibit "A," in which it was agreed that said lands should be divided as therein stipulated, and that he put her in possession of an undivided half of said property in accordance with said agreement, but that the same has never yet been partitioned.

That soon afterwards her husband, W. A. Buck, since deceased, purchased from said Shepherd his remaining half of said lands, who placed him in possession of it; that at the same time he sold to her husband certain personal property, & herself & her said husband executed certain notes in payment thereof; that on the 21 July of that year he executed a deed of conveyance therefor, reciting, with her consent, that in consideration of the premises he conveyed said property to herself and her said husband; that afterwards, on the — day of January, 1869, her said husband sold to defendant, J. S. Drake, his interest in said lands and executed to him a deed therefor; that they requested complainant to execute a relinquishment of her dower interest
16 in her husband's undivided half of said lands, which she very willingly did; that she took the precaution to see that the certificate of the clerk who took her acknowledgment recited that she acknowledged, according to law, the relinquishment of her dower interest in said lands; but that she did not intend to convey any other, and don't think that she did; but that since the death of her said husband she was induced for a time to believe that by mistake she had conveyed to said Drake one undivided one-half of her own interest in said lands, and she thinks it possible

that she so reported the matter to the probate court, under a misapprehension of the facts and of the law; but if she did she charges that it was an error and that she owns said half.

That without her consent said Shepherd was afterwards induced to execute a deed different from that above mentioned, which was dated as of the 21st of July, 1868, but which was, in fact, executed some months after that time, and she is informed and believes it was acknowledged and recorded in Desha county, Arkansas.

17 That she has been informed the recital in the deed of said W. A. Buck to said Drake purports to be a conveyance from him and herself to said Drake; but, if so, she avers that it is error except as to dower; that she only attempted to relinquish her dower interest and not to sell or convey her own, and that the certificate of acknowledgement by which she is bound correctly described the interest she intended to convey.

That the purpose of her husband to retain title in herself was evidenced from the fact that the means to pay said Shepard therefor were derived either directly or indirectly from her, he having disposed of his own property for another and different purpose, and that in fact payment was made on said property exclusively with the means of herself or with the proceeds of her means, and that no part of the consideration from Drake was paid to her, in consequence of which her husband consented for her to purchase the half-interest in said property before he became interested at all, and afterward sold only his own interest, and she, as already stated,

18 readily and willingly joined him in the relinquishment of the dower therein.

That when she made said purchase a suit was pending on the equity side of your honor's court in favor of W. Henry Graddy, seeking to divert the title of said Shepard to said property, and that she and afterwards her husband purchased with the knowledge that the same was pending, and in order to strengthen his title and defeat said suit, as she understands, defendant Shepard or Henry Johnson, who owned the property when suit was brought, allowed the property to sell for taxes, and one James Murphy became the purchaser.

That the redemption money was paid, but, instead of taking his certificate endorsed as redeemed, she charges that said parties had an agreement prior to expiration of time for redemption of said lands that Murphy's title would be allowed to mature, and that he would then convey the same by quitclaim deed, and she charges that he accordingly conveyed the same to Buck & Drake. She avers that she knew nothing of the arrangement, and was no party

19 thereto; that said Shepard engaged to convey to her the title to an undivided one-half interest in said land; that he did so convey the same, and that no arrangement between himself and her husband, even if it had been so intended (which she denies), could deprive her of the title. On the contrary, she submits that the title, if so conveyed at all, only confirmed Drake's title to one-half and her own to the remainder, but she charges that it was her husband's

duty to pay the taxes upon said lands, being in possession of and using her interest therein.

She charges that the payment was made with her own money; that it was with the proceeds of the crop raised upon said premises, and that it was intended to be a conveyance to her, and, if expressed differently (which she does not know, not having seen the deed), that it was a mistake and should be corrected, but that in its present shape it is a cloud upon her title and should be removed.

She understands that defendant Drake has recently sold his interest in said — to J. C. Winfrey.

20 That of said defendants the following are non-residents of the State of Arkansas, to wit: Charles, Walter, Alvis, Mary, Lulie, Frank, and Belle Buck, Letitia Vawter, and W. Vawter, her husband; J. S. Drake and J. C. Winfry.

And that Mary, Leslie, Frank, Belle, and William Buck are minors without legal guardians, as she verily believes.

She prays the appointment of guardian *ad litem* for the minors, process, and publication against all the defendants according to law, and upon final hearing of this cause (at which she prays leave to use the records, but will cause certified copies to be filed if required) she prays that said tax title may be delivered up and cancelled and her title to said undivided half of said property quieted, and if *and* to the attainment of her rights that partition of the same be decreed by your honor and for all further appropriate relief in the premises.

And she will ever pray, &c.

W. G. WEATHERFORD, *Sol'r.*

STATE OF ARKANSAS, *County of Desha:*

21 Personally appeared before the undersigned, justice of the peace in and for said county, Sallie S. Buck, complainant in the foregoing bill, who made oath in due form of law that the matters therein stated are true in substance and as she believes in fact, and especially that the statement of the non-residence of defendant is true.

(Sign-) SALLIE S. BUCK.

Sworn to and subscribed before me this the — day of Febu'y, 1872.

H. P. BLACKBURN, *J. P.*

Which bill bears the following endorsement in words and figures as follows:

S. S. Buck *vs.* C. Buck *et al.* Complaint in equity. Filed and writ issued and publication made March 11th, 1872. Jas. Murphy, clerk.

The Exhibit A referred to in the bill follows, which is an agreement entered into April 24, 1868, between Clifton R. Shepard, as trustee for his children & Sallie S. Buck, to divide the plantation equally, so that each shall have one-half of the improved land and

of the gin-house & fixtures. Process was duly served and the following decree was entered in the cause, viz:

SALLIE S. BLACKBURN

vs.

22 CHAS., LEWIS H., WALTER A., MARY, LULIE, FRANK, BELLE, & Wallace Buck, Letitia Vanoter and Her Husband, Wm. Vanoter, all Heirs-at-Law of W. A. Buck, Dec'd; C. R. Shepard, J. S. Drake, James Murphy, and J. T. Murphy, & J. T. Winfrey, Defendants.

This cause came on to be heard on original and amended complaint and exhibits, answer of J. M. Purnell, guardian *ad litem* of the minor children of W. A. Buck, dec'd, and the testimony adduced at the hearing, and it appearing that process had been duly served upon the residents and waiving order published against the non-resident defendants, and that all of said adult defendants have wholly failed to appear and answer said complaint, it is considered and adjudged that the allegations in said complaint be taken as confessed and true against them; and it appearing on the hearing hereof that on the 24th day of April, 1868, complainant purchased of defendant, C. R. Shepard, an undivided one-half of the real estate or plantation, on which he *had* at the time resident, consisting of the northeast fr'l fourth, section No. (20) twenty, E. ½ S. W. fourth of section No. (20) twenty, south-
23 east fourth of section No. (20) twenty, W. fr'l half section No. (21) twenty-one, northwest fr'l fourth section (28) twenty-eight, northeast fourth section No. (29) twenty-nine, east half of northwest fourth of section (29) twenty-nine, all in township (7) seven south, range (1) one east, containing 973 —, and that she has not sold or conveyed the same away, and that her husband, the said W. A. Buck, afterwards purchased of said Shepard the remaining half of said lands, all of which he conveyed by deed to W. A. Buck and Sallie S. Buck, and that said Walter A. Buck afterwards sold his half of said land to J. S. Drake and convey- the same to him by deed, in which the said Sallie S. Buck joined, for the purpose of relinquishing her dower right in his half of said land, and that she did not relinquish any other interest or right; and it further appearing that the tax title was purchased with money made upon said land while the said half was the property of complainant the same inured to her benefit, and the conveyance to Buck and Drake should be held and considered as a conveyance to said complainant and said Drake; and it further appearing that the southeast
24 quarter of said section No. (20) twenty was sold and delivered as part of said land, although omitted by mistake from the description of said land in the several deeds referred to in the pleading herein, and that complainant's title thereto should be quieted, it is therefore considered, adjudged, and decreed that complainant's title to the said undivided half of said land be, and the same —, held good and valid, binding, free from any supposed right of said W. A. Buck, deceased, for or — account of any supposed purchase or

conveyance whatever, and that their interest in said southeast quarter of section (20) twenty of any and all said defendants pass to and vest in her, and that her title to said land is hereby quieted and forfeited as against any and all of the defendants herein, and that complainant pay all the costs in this behalf expended.

EXHIBIT A No. 2 TO BILL.

This is the deed from Walter A. Buck & Sallie A. Buck to J. S. Drake, refer-ed to in the bill, bearing date January 2nd, 1869,
25 & conveys the lands described in said bill.

EXHIBIT A No. 3.

This exhibit is the agreement of Feb'y 7, 1872, between J. S. Drake and J. F. Winifry to convey the said lands.

EXHIBIT B.

This is the record of the cause referred to in 33d Ark. Reports.

EXHIBITS C & D.

These are the deed- from John Lawrence, register in bankruptcy, to Henry Harrison, assignee of Winifry, of date Nov. 1st, 1878, and from Henry Harrison, assignee as aforesaid, to W. G. Weatherford, of date Jan'ry 30, 1880, respectively, as stated in the bill of complaint.

EXHIBIT E.

This is the deed from W. G. Weatherford to C. P. Hunt, of date June 11th, 1880, as set forth in the bill of complaint.

EXHIBIT F.

This is the tax deed from J. P. Jones, clerk of Desha Co.,
26 to C. P. Hunt, of date Sept. 16, 1872, as shown in the bill of complaint, and is copied at page 86 of this transcript. Process was issued and returned duly served on said defendants, Sallie S. Blackburn, Charles P. Blackburn, and W. P. Smith, on the 5th day of August, 1881.

Orders of Court.

In the United States District Court.

CLARENCE P. HUNT, Complainant,
vs.
SALLIE S. BLACKBURN, Defendants.

JUNE 25, 1881.

Now, on this day, comes the complainant in this cause, by his solicitor, W. G. Weatherford, and file- his bill of complaint and stipulations for costs. Whereupon summons is issued and placed in the hands of the marshal, returnable on the 1st day of August, 1881.

Attest: SAMUEL I. CLARK, *Clerk.*

In the United States Dist. Court.

CLARENCE P. HUNT, Complainant,
vs.
S. S. BLACKBURN *et als.*, Defendants.

SEPT. 5, 1881.

Now, on this day, come the defendants herein, by their solicitor, Jno. A. Williams, Esq., and enter their appearance herein.

Attest: SAMUEL I. CLARK, *Clerk.*

27 On the 12th day of October, 1881, the following order was entered while the court was in session:

CLARENCE P. HUNT, Complainant,
vs.
SALLIE S. BLACKBURN *et als.*, Defendants.

Now, on this day, come the parties in this cause, by their respective solicitors, and by consent this cause is submitted to the judge of this court in vacation, testimony to be taken and filed by consent.

28 On the 12th of March, 1883, and while court was in session, the following order was entered:

C. P. HUNT *vs.* SALLIE S. BLACKBURN *et als.*

This cause come on this day upon motion of complainant's counsel for a decree *pro confesso* against Sallie S. Blackburn, Charles B. Blackburn, and W. P. Smith, defendants herein; and it appearing to the court that said defendants were duly and properly served with process requiring them to appear herein on or before the 1st day of August, 1881, and answer said bill, and having wholly failed so to do, the court is pleased to and doth order and adjudge that said bill be, and is hereby, taken for confessed as to said Sallie S. Blackburn, Charles B. Blackburn, and W. P. Smith, and said bill is set for hearing at the next term of this court.

(This *pro confesso* was set aside by consent, but a record entry was omitted by inadvertence. The order is now stricken out by consent of appellant's counsel.)

Answer of Sallie S. Blackburn.

In the U. S. Circuit Court for the Eastern District of Arkansas, at Helena.

29 CLARENCE P. HUNT, Complainant,
vs.
SALLIE S. BLACKBURN, CHARLES B. BLACKBURN, & W. P. SMITH, Defendants.

Demurrer & Answer.

The defendant, Sallie S. Blackburn, formerly Sallie S. Buck, by protestation, not confessing or acknowledging all or any of the mat-

ters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows that the complainant has not in and by said bill made or stated such a cause as does or ought to entitle him to any such recovery or relief as is thereby sought and prayed for from or against these defendants; and, not waiving their said demurrer, but relying thereon and saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which can or may be had to the said bill of complaint, for answer thereto, or to so much thereof as this defendant is advised is in anywise material
30 or necessary for her to answer unto, *and* she answers and says—

That she admits that C. R. Shepard, in the complainant's bill named, did duly make and execute to Walter A. Buck in his lifetime and Sallie S. Buck, his wife, surviving (now Sallie S. Blackburn, one of the defendants herein), on the 21st day of July, A. D. 1868, a warranty deed, which was duly acknowledged on the 2nd day of January, A. D. 1869, and did thereby convey to the said Walter A. Buck and this defendant, his wife, jointly and during coverture, the fee in certain lands described in complainant's bill, aggregating 973 acres, as will more fully appear by reference to exhibit marked "X," attached hereto and prayed to be made part hereof; and that said lands were purchased and paid for by this defendant out of her own separate estate.

And this defendant, further answering, admits that a title bond was executed by the said C. R. Sheppard in his lifetime to this defendant, by which he bound himself to convey to her a half interest in the said lands, but that subsequently this defendant and
31 Walter A. Buck, her first husband, concluded to purchase and did purchase all the said lands as aforesaid; whereupon the said title bond was cancelled and held for naught and a new arrangement was made and entered into by which the said Walter A. and this defendant, then his wife, held, as expressed in said deed marked Exhibit "X," hereto attached, and they continued so to hold, the said lands as aforesaid until the execution and delivery of the said deed of conveyance to the said J. S. Drake, which was made and executed on the 2nd day of January, A. D. 1869, and acknowledged on the 11th day of January, A. D. 1869, by the said Walter A. Buck and this defendant, conveying in fee simple forever and while she was a married woman and the wife of the said Walter A., to the said J. S. Drake "one undivided half of certain lots or tracts of land situate, lying, and being in the county of Desha and State of Arkansas, which will more fully appear by reference to a copy of said deed, hereto attached and made part hereof, marked 'Exhibit X."

And this defendant, further answering, admits that there
32 was a mistake made by the conveyancer in the description of the lands intended to be conveyed by the said C. R. Sheppard to the said Walter A. and this defendant, which was repeated in subsequent deeds of conveyance unintentionally, and after discovery proper proceedings were had, both in Tennessee and in Arkansas,

for reforming the same, and to such purpose and effect as in complainant's said bill of complaint mentioned and set forth.

And this defendant further denies that she was aware of and fully understood the negotiation and the purchase by the said J. S. Drake of her husbands half interest in the said lands or united with him, as is alleged, in what she supposed was a valid conveyance in fee, but merely signed the same at his urgent solicitation, in utter ignorance of her rights in the premises, being informed and believing that she was only relinquishing a bare possibility of dower, when in point of law she could have none therein.

And, further answering, she admits that the said J. S. Drake, was a non-resident of the State of Arkansas and a resident of the State of —; but she denies that he cultivated the said lands or
33 any part thereof with her, or in partnership with her, as is alleged; and she further denies that she showed the said lands, or proposed to sell to the said Winifry an undivided half interest therein, either in person or by an agent, but alleges the truth to be that the sale and conveyance of the said Drake to the said Winifry for an undivided half interest in the said lands was a transaction with which she had nothing to do and about which she was not consulted and had no opportunity to assert title in herself, and was at the time wholly ignorant of any design on the part of the said Drake to sell and convey the same; and she denies that either the said Drake or the said Winifry were ever in possession of the said lands or cultivated the same in partnership with her.

And she further admits that Walter A. Buck, her first husband, died on the — day of ——, A. D. 1870, and that she qualified as executrix of his last will and testament, as is alleged, and being overcome with grief and annoyed by creditors, she counselled with one W. G. Weatherford, who became her attorney and confidential adviser in all the matters and things pertaining to the estate of her
34 deceased husband, as well as her own estate, and as such she reposed confidence in him and followed his counsel and advice in all things affecting her property rights, and in so doing the bill filed on the chancery side of the Desha circuit court was drawn and suit brought against the said Drake Winifry *et al.*, in which, as is alleged, she was made to say, and was so advised by her said attorney and confidential adviser, W. G. Weatherford, to say, that under the deed from C. R. Sheppard she only had a half interest in the said lands; and she further alleges that in the cause instituted in the circuit court of Desha county, Arkansas, styled S. S. Buck *vs.* Chas. Buck *et al.*, to correct the omission and perfect the deeds therein mentioned and referred to, the said W. G. Weatherford acted as her attorney and confidential adviser and drew the bill of complaint and appeared and acted in her behalf, and in which she was made to say and induced to believe that she was only entitled to a half interest in said lands, when in point of law and in fact she held, owned, and had a legal right to enjoy, as expressed in the said deed
35 from the said C. R. Sheppard to the said Walter A. Buck and this defendant; and she was further made to say that the said J. S. Winfrey owned the other half of said lands, when in fact he

had no interest whatever, and that each and all the allegations in all the suits and legal pleadings respecting her and her husband's estate were made by the said W. G. Weatherford as her attorney and confidential adviser and adopted by her, inasmuch as she supposed he was learned in the law and a desirable counsellor; but she is now informed that she was therein and thereby deceived, misadvised, and mislead to the great prejudice of her rights and quietude of mind, not oblivious to the great and unnecessary expense incident thereto, and now she most emphatically denies that she has committed herself in every way as alleged, or any way, as she now asserts, to the validity of the said Winfrey's title or any other at variance with that expressed in exhibit marked 4, hereto attached, and denies that she is "estopped" by reason of the failure of her attorney to properly advise her or by whom she has been confidingly mislead and greatly wronged; and she further denies that the said
36 Winfrey was in possession of the said half interest during a part of the time or at any time, excepting as hereinbefore stated, or that he abandoned the said place in the sense intended to be conveyed in the said bill of complaint; but she admits that he, the said Winfry, filed his voluntary petition in bankruptcy and was adjudged a bankrupt by the United States district court for the division of Middle Tennessee, and, after due time, was discharged from all his indebtedness; and, she is informed and believes, a half interest in and to the lands in controversy was sold at his bankrupt sale and purchased by the said W. G. Weatherford for an insignificant sum, being the sum of $61.60, sixty-one & $\frac{60}{100}$ dollars, greatly disproportioned to its real value at that time under a good title; and she admits that the said W. G. Weatherford sold the said pretended half interest in said lands acquired at said bankrupt sale to the complainant, Clarence P. Hunt, for the paltry sum of five hundred ($500) dollars, which is alleged to be the fee of the said W. G. Weatherford; she further says that it is possible that the said Drake
37 became embarrassed, as alleged, and borrowed money from the complainant herein and did many other things, as alleged, under the advice of his counsel, but about all of which she knows nothing that she is required to set forth in this answer, and is not concerned therewith; but she denies that complainant is a purchaser for value of said property it holds under a title that this defendant is "estopped" to deny, but, on the contrary, she alleges that when she discovered her legal rights in and to the said lands and realized that she had been misadvised and misled by her former attorney, who purchased at the bankrupt sale and subsequently sold to the complainant herein and is counsel and solicitor for him, she has persistently and unmistakably declared herself to be the sole owner of the said lands and has held adversely to all claimants and refused to recognize the pretended claims of the complainant, Clarence P. Hunt, in 1879, in 1880, and in 1881, as alleged, and the claims of all other persons, at all other times, hostile to hers she has opposed, after being advised of her legal rights under the said deed, marked Exhibit "X," hereto attached, and of
38 the laws and decisions of the State of Arkansas, a knowl-

edge of which was withheld from her; and she further alleges that long before the bankruptcy of the said T. S. Winfrey, in the State of Tennessee, a suit was instituted by the said Winfrey in the chancery court, at Memphis, Tennessee, under the style of J. F. Winfrey *vs.* Jno. S. Drake, praying for a rescission of the contract between the said parties on the ground that there were certain omissions in the description of the lands, and that an execution had been levied thereon, and that there was a partial failure of title, &c., which was defended by the said W. G. Weatherford, as counsel for said Drake, and which cause came on to be heard, and at the hearing it was, among other things, decreed and adjudged by the court that the said contract be, and the same is hereby, rescinded, whereupon it was ordered that the purchase-money notes be delivered up and an account be taken, &c., all of which will more fully appear by reference to a transcript of the record of said cause marked X^3, hereto attached and asked to be considered a part hereof.

39 She further alleges that at the time of the bankruptcy of Winfrey the said contract of sale from Drake to him, the said Winfrey, had long before been set aside and held for nought, and that he had no color of title, not even the faintest shadow of a claim to any interest in the said lands, and that the said bankrupt sale and the sale by the purchaser Weatherford thereat to the complainant C. P. Hunt herein conveyed nothing and carries nothing but costs; and this defendant further denies that the complainant Hunt is the owner in fee of said lands as alleged by reason of the tax sale evidenced by the pretended tax deed attached to the complainant bill of complaint and marked Exhibit "F," nor did he obtain thereby even a link in the chain of his pretended title derived from a bankrupt sale void *ab initio*, and she alleges that the assessment and levy a-tecedent to the said tax sale were illegal, and that there was no legally authorized agent to collect the taxes for the year 1872, after the death of the collector, and that the notice of the said pretended sale was not printed and published according to law, and that the officer mak-

40 ing the said sale had no legal authority to sell, and sold in a manner contrary to the mode prescribed by law in such case made and provided, and that the said tax deed is irregular, informal, and void upon its face and of no legal effect whatever; and she further denies that she ever offered to the complainant, Clarence P. Hunt, less than he was entitled to or anything whatever, or even intimated, rather than asserted, her ownership of the entire tract of land, but she says that he has always and at all times since she has known and understood her legal status in relation to the said lands asserted her sole and exclusive ownership therein without resorting to vague intimations, but by employing clear and unmistakable language which the complainant could not and did not fail to understand; and she further denies that she ever stated that she is only cultivating the "upper half" and part of the lower half of said land, or that the remainder was and for years had been unoccupied and could be taken by the complainant herein if he so desired; but alleges that she has steadily and per-

sistently refused all overtures, propositions, and compromises
41 from whatever source they came looking to any adjustment or settlement with any one which would interfere with what she is advised is the legal ownership of the said lands; and she further says that whatever fencing may have been removed or other property sold or exchanged, or whatever grasses may have been suffered to naturally grow, "Bermuda" as well as "Timothy," she submits was the exercise of a discretion and design not inconsistent with a well-founded idea of sole ownership; and if any part of the land was not cultivated it was owing to her inability to get labor to cultivate the same.

And she further admits the matters and things alleged of Chas. B. Blackburn, her codefendant herein, which are not specially denied herein, and denies that he has influenced her to disregard any legal rights which the complainant may have, but alleges that she has acted through the advice and counsel of her legal advisers since she discovered her rights, and stands upon her rights under the deed hereinbefore mentioned, and has consequently refused to make terms with or to account to the complainant, or any one for him, well knowing, at a late day, however, her rights in and to the said
42 lands and whatever transactions or alienations she may have made concerning the same; she fully understood the extent of her liabilities, but she denies that her codefendant Blackburn incurred any risk to himself or obligation to the complainant in any relation he may sustain to this defendant, or that he is liable to account to him or any one save this defendant for the rents, profits, and issues of the said lands for any of the time that he may have been in possession of the same, and submits that it is a matter with which this forum has no concern under the form of the complainant's bill.

And she further admits that she bargained, sold, and conveyed the tract or parcel of land described in the deed from her, the said Sallie S., to Louis H. Buck, as she had a perfect right to do, and avers herself ready and willing at all times to defend the same and all her actings and doings in and about the said lands since she became fully cognizant of her rights and responsibilities, and disavows all declarations, allegations, and admissions put into her mouth by her
43 former attorney and confidential adviser, whether expressed in pleadings or otherwise, prejudicial and antagonistic to the plain and obvious import of the said deed from the said Sheppard to the said Walter A. Buck and this defendant, and she submits that, in equity and good conscience, she ought not to be bound by them and estopped from asserting, maintaining, and defending her rights under the law.

Having fully answered, she submits unto your honor that the complainant is in neither equity nor law entitled to any of the alternate relief prayed for, and that the complainant's bill of complaint ought to be dismissed, as she will ever pray, &c.

JNO. A. WILLIAMS,
L. A. PINDALL,
Sol's for Defendant.

STATE OF ARKANSAS, *County of Pulaski:*

S. S. Blackburn, being duly sworn, says that the matters set forth in the foregoing answer are true.

SALLIE S. BLACKBURN.

Subscribed to & sworn before me this 25th day of April, 1883.

HENRY C. COLDWELL,
U. S. Dist. Judge.

44 *Answer of Smith.*

In the United States Circuit Court, Eastern District of Arkansas, at Helena.

CLARENCE P. HUNT, Complainant,

vs.

SALLIE S. BLACKBURN, CHARLES B. BLACKBURN, & W. P. SMITH, Defendants.

The defendant, W. P. Smith, impleaded with Sallie S. Blackburn and Charles B. Blackburn, defendants, in the above-styled cause, now pending in the United States court for the eastern district of Arkansas, on the chancery side thereof, at Helena, in said State, answers and says that he is informed and believes that his codefendant, Sallie S. Blackburn, sold and conveyed, for a valuable consideration, the tract or parcel of land described in the deed from her, the said Sallie S., to Louis H. Buck, which for greater certainty is hereto attached, marked Exhibit X^4, and made part hereof, and he admits that the said Louis H. Buck and his wife sold and conveyed the same land to this defendant for the consideration and purposes expressed in the deed from the said Buck & wife to this defend-
45 ant, which said deed is hereto attached and marked Exhibit X^5 and made part hereof, and he denies the matters and things alleged in the complainant's bill of complaint as far as they concern him, and alleges that he is an innocent purchaser for value and relies upon the covenants in his deed of conveyance, and is now in possession and has been since his purchase, and prays to be dismissed with his costs and all other proper relief, &c.

JOHN A. WILLIAMS,
L. A. P. PINDALL,
Sol's for Defendant.

STATE OF ARKANSAS, *County of Pulaski:*

S. S. Blackburn, being sworn, says the matters set forth in the foregoing answer are true.

Sworn to and subscribed before me this April 25th, 1883.

——— ———.

EXHIBIT X to Answer.

This is a certified copy of the deed from C. R. Sheppard, trustee for Isabella and Thomas C. Sheppard, to Walter A. Buck and
46 Sallie S. Buck, of date Janu'y 2d, 1869, conveying the lands in controversy in this suit.

EXHIBIT X^2.

This is a deed from Walter A. Buck and Sallie S. Buck, his wife, to Jonathan S. Drake, of date Jan'ry 2d, 1869, conveying an undivided half interest in the lands in controversy.

EXHIBIT X^3.

This is a synopsis of proceedings and copy of decree in Winfrey *vs.* Drake, in chancery court at Memphis, Tenn.

EXHIBIT X^4.

This is a quitclaim deed from Sallie S. Blackburn to Louis H. Buck, of date July —, 1879, conveying all her interest in 140 yards square of the plantation in controversy described by metes
47 and bounds.

EXHIBIT X^5.

This is a deed from L. H. Buck and A. M. Buck, his wife, to W. P. Smith, of date June 25, 1880, conveying the 140 square yards described in X^4.

Replication.

C. P. HUNT *v.* S. S. BLACKBURN *et al.*

This repliant saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the defendant's answers and each of them are untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true; all of which things he will be ready to prove as this court shall direct, and prays, &c.

WEATHERFORD & ESTES,
For Comp't.

48 The statement of Mrs. S. S. BLACKBURN, the defendant, to be used as evidence in the case of Hunt *vs.* Blackburn:

I am one of the defendants in this action. I was the wife of Walter A. Buck, having been married to him in 1863. The deed mentioned in this case was made to my husband, W. A. Buck, and myself during our marriage; he died in August, 1870. I had at the time of our said marriage about $8,000 in money. He owned a place in Illinois, where he lived and we were married, but it was incumbered by a note and mortgage made after our marriage. In — settlement that he made upon his first wife and children he paid said mortgage with my money and conveyed me the land in consideration of the money (I mean the Illinois land); he used about $7,000 of my money in consideration of this land in Illinois. We sold that land in 1868 with the intention of moving South. I loaned C. R. Shepard $1,600 of my money in 1868, in March, and

came South to Desha Co., Ark., in April, 1868; we purchased a half interest in the land in controversy of Shepard and took his covenant to convey it to me, and a copy of it is ex. with the
49 complaint herein; this is in Shepard's own handwriting.

1 Question. Did you take possession of the land under this agreement?

Ans. We did; in April, 1868. Mr. Buck & Mr. C. B. Blackburn cultivated it in 1868 under this agreement.

2. When did you buy the other ½ interest?

Ans. In June, 1868. Mr. Buck bought it—that is, he made all the arrangements; also the stock, furniture, farming utensils, &c.

3. What kind of instrument was made to you or Mr. Buck by Shepard at the last sale?

Ans. It was a deed and mortgage together, I think. The deed was to me; the mortgage was to secure Mr. Shepard for his stock; the deed was not recorded. I think I gave this deed to Col. W. G. Weatherford. I have not got it. Mr. Weatherford wrote the deed just mentioned. A deed was afterwards made to the land; it is now shown me as part of my answer, marked Exhibit X. This deed was drawn by some lawyer that Drake got; he was not satisfied with the other deeds. I don't know where the original is. My husband had the management of the property up to his
50 death, in 1870, when we came to Ark. Mr. Buck had no property of his except what he got from me; I don't know how the deed was made to me & Mr. Buck; I did not know except that Mr. Buck & I had a discussion about it; he did not want all the property tied up in his wife's name; he wanted to have it so that he could pay his debts; I administered on my husband's estate; I employed Mr. Weatherford to attend to it; he made out and filed the inventories; I remember the suit of myself *vs.* Chas. Buck & others in Desha cir. court; the circumstances about this suit are as follows: When the inventory was first made ¼ interest in the place was inventoried as belonging to the estate; when I come to look over the deeds, I don't remember what deeds, but I showed them to Mr. Weatherford and told him that I did not see why I did not have a ½ interest in the place; he said that he did not see why I did not have it, too, and the suit was brought by him; I did not state any facts to him that he did not know already; all that I know
51 or remember about it is that the deputy sheriff read the notices to some of the heirs in my hearing; they were living with me; Mr. Weatherford knew the facts better than I did; in the suit of Buck & Drake and Winfrey ag'st Randolph all I know about it is that the notice of sale by Randolph was stuck upon the gin-house, and I asked C. B. Blackburn, who was the deputy who posted the notice, what I should do about it; he said send the notice to Mr. Weatherford, who was my lawyer, and he would attend to it; I did so and he brought that suit; I did not furnish him with any facts in the case; I signed whatever papers Mr. W. sent me.

4 —. Was you present at the sale of the ½ interest to Drake by your husband?

Ans. I was not; I do not know where the contract was made.

5 Ques. Were you present when Drake sold to Winfrey all interest in said land?

Ans. I was not.

6 Ques. Was the sale to Winfrey made during Mr. Buck's life?

Ans. It was after his death.

7 Ques. Did Mr. Winfrey ever consult yout about his buy-
52 ing a ½ interest in the place?

Ans. No, sir.

8 Ques. Did you ever in any manner encourage or ask or advise or induce Mr. Winfrey or Drake to purchase any interest in this land?

Ans. I did not.

9 Ques. Did you know what interest you took under the deed from Shepard to Buck & wife?

Ans. I did not.

10 Ques. When did you first learn that you had the entire — in said land?

Ans. In April, 1872, Mr. Winfrey told me that Col. Pindall had told him that I owned the whole; he was not satisfied with his purchase and went down to see Col. Pindall, and was told by him that Mr. Drake could not sell ½ of the place and that I could hold the whole place; I said I did not believe it, because it was the first intimation I ever had of it; as I went through Memphis I told Col. Weatherford about it, and he said he did not think I could hold the
53 whole place and could not gain it if I went to law about —; he was then my attorney in other matters; I did not consult him particularly about that matter; I just told him what I had heard.

11 Q. When did you ever consult any attorney about it?

Answer. Not until Winfry left the place; I then took possession of the whole place; I then consulted Major H. Carlton about it; he told me to hold possession and pay the taxes and he was confident I could gain it; when Mr. Winfrey told me what Col. P. said he was not my attorney; I relied on what Mr. Weatherford said; he was my attorney; when Col. W. brought this suit against me I employed counsel to defend the same.

Cross-examination of Mrs. S. S. BLACKBURN:

1 X. Did Mr. Buck pay for the Illinois land with his own money or with yours?

He had the Illinois land before he married me.

2 X. How long was it after you purchased the half interest
54 in the land from Mr. Shepard before the other half was purchased?

One was bought in April; the other in June.

3 X. Did you get an undivided half of the whole tract or were you to get the "upper" or "lower" half *half* of the place with some of the improvements?

It was an undivided half so far as the land was concerned, but the dwelling-house was not included.

3½ X. Please refer to the contract of Mr. Shepard (which is exhibited herein) and state if it was not the purpose that Mr. Shepard should

keep the part on which the dwelling-house was situated and half of the gin-house and you the other half, but that you were to have three of the cabins.

Yes, sir; I noticed it this morning.

4 X. Was not the dwelling-house on what is called the upper half or the half nearest Laconia?

I think it is.

6 X. Was not the purchase in June made by Mr. Buck and not by yourself from Mr. Shepard?

Well, I think it was mine; made to me, but you have the deed.

55 7 X. The question was not to whom the deed was made, but who made the purchase?

Mr. Buck made the arrangements; he, of course, did all that. I had nothing to do with it.

8 X. Was it not well known at the time that the first purchase in April was yours and the second your husband's?

Why, no; he did all the business arrangements previous to his death. I never attended to business matters "till after his death," and I thought they were both made to me.

9 X. If they were both your purchases why do you think the deed, after the last purchase, was made to your husband and yourself?

I gave it no thought, as I had other matters to annoy me.

10 X. When did you last see the deed that you think the writer (Mr. Weatherford) now has?

I think I have not seen it since 1872.

11 X. Please refresh your memory and say if you did not write to Mr. Weatherford some years since and say that you and Mrs. Stephens had had a discussion about it and have him send it to you?

56 I have no recollection of it, though I may.

12 X. Was the deed that you say Mr. Weatherford wrote withdrawn and a new one written at your request or because it was required by some one at Memphis?

Mr. Drake required it.

13 X. What was your object in going to Napoleon and acknowledging the deed; did you intend that Mr. Drake should have half of the place or not?

I went as Mr. Buck insisted, & thought I only relinquished a dower.

14 X. Did you not think that it gave Mr. Drake title to half of the land?

I thought but little about it, as I was sick.

15 X. When Mr. Winfrey told you that Col. Pindall said that you could recover all the land did you not tell him that you did not want to do it; that your husband had sold it to him and you were willing for him to have it?

I told him I thought he was mistaken.

16 X. Did he not also tell you that Col. Pindall would take a contingent fee in the suit to recover it?

57 I never heard of a contingent fee, but applied to Col. Pindall later and he refused the case, as he was then employed in a suit against me.

17 X. How long did Mr. Drake remain on the place and cultivate it?

Mr. Drake and Mr. Buck cultivated it together the year Mr. Buck died. I think two years. Mr. B. died in the 2d year. Mr. Buck then rented to Hobbs & Blackburn.

18 X. How came Mr. Winfrey to come and look at the place before buying of Mr. Drake?

I don't know about that; I suppose because he wanted to. He and a Memphis merchant were looking at the country.

19 X. Had you not caused Mr. Weatherford to advertise your interest for sale in the official newspaper?

I don't recollect I advertised for rent; I don't see why I should; I might have done it; though now you speak of it, I don't know but it was advertised.

20 X. Did not Mr. Winfrey speak with you as to your price, but not agree to give you what you asked?

58 He wanted to rent it once, but never tried to buy it. Mr. Drake tried to buy once—offered me a certain price, but Mr. Winfrey never did; that is only my memory. I have no recollection of it.

22 X. Do you recollect whether you talked with him about Mr. Drake's interest before he bought it?

I have no recollection of having any conversation with Mr. Winfrey about it.

23 X. Did you read over the papers in the suits referred to in this case before making affidavit to their truth?

I don't remember of ever reading over any of them. I signed what you told me to sign.

24 X. Do you mean that you also swore to what I told you to swear?

I don't know that I swore to them. I don't remember of it—or of signing but two.

25 X. Is your memory very good about such matters, or are you liable to forget them?

Well, some of those I don't remember very much about. I
59 thought you would do what was right.

26 X. How long did Mr. Winfrey remain upon the property or in possession of it?

I don't think he was there over two years. He was there one & his son one. I believe he was there 3 years. I think he cultivated one year, then himself and Winfrey, and then his son. I think they left June, '75.

27 X. Did you ever claim the possession from them or from Drake, or assert any right against their claim? If so, when?

I took possession when Winfrey left; that is all.

28 X. Did you divide the place with Winfrey and he have the lower and you the upper part?

I did not. Mr. Drake and Winfrey decided which they would cultivate. The place was really never divided.

29 X. When was this separate arrangement made—the first year he was there or later?

The first year.

30 X. Was that kept up while he remained or not?

I don't know. I went off the place and Charles Blackburn attended to it.

60 31 X. Was he not your agent and brother-in-law, and has he not been acting for you?

Yes, sir.

32 X. Have you since cultivated that half that Winfrey left?

It is now in cultivation. I rented it last year to Mr. Thornton; he was to fence it.

33 X. Did you not tell Mr. Weatherford about a year ago that the Winfrey half had not been cultivated and you would not be responsible for rent to Mr. Hunt?

I don't remember telling him that. I told him that, to get rid of a lawsuit, I would give Mr. Hunt so much of the land which was ditched. I said that I had never had more than half of the place in cultivation, and part of the time not that. He spoke of the rents, & I said I had paid all the taxes.

34 X. At that time was not that half of the land unoccupied?

Well, one half of it was. I never admitted to you that Mr.

61 Drake owned half of it. I speak of when we had that conversation.

35 X. As a matter of fact, did you not hesitate for some years about claiming the Drake half, and consult many persons about it?

I did not hesitate long after I found out I could get it. I told you of it, & you said I could not get it. I asked Col. Pindall, through Mrs. Stevens, and he declined *not* to take the case, but said he thought I could get it, and then I employed Maj. Carleton.

36 X. Did you not also canvass the matter with other friends, who were not lawyers?

Why, I might have talked of it to my relations; nearly all are related there. I don't remember asking them if they would do it.

S. S. BLACKRURN.

Subscribed & sworn to before me this 25 April, 1883.

HENRY C. CALDWELL,
U. S. Dist. Judge.

Endorsed: Filed Oct. 10, 1883. Samuel I. Clark, clerk.

62 *Deposition of W. G. Weatherford.*

U. S. Dist. Court, East Ark's.

C. P. HUNT *v.* S. S. BLACKBURN *et als.*

I resided near the place in controversy at the time of its purchase by C. R. Shepard, and in April, '68, of the purchase from him of half of it by def't, Sallie S. (then Mrs. W. A. Buck), and two or three months later of the other half by W. A. Buck, and in January, '69, when J. D. Drake purchased the latter's half and took possession of it.

At Mr. Shepard's request I drew the obligations for title and deed of conveyance of their respective interests from him, I think, in July, 1868; but when Drake purchased, in Jan'ry, '69, he required a deed drawn by a lawyer at Memphis, where he resided. The latter not only drew the deed from Buck to Drake, but redrew a deed from Shepard to Buck and wife and dated it back, and required that Mrs. Buck should go to Napoleon and acknowledge the execution of the one from Buck to Drake before the clerk. I had
63 had the one drawn by me acknowledged before a justice of the peace, which, in Tennessee, is not sufficient. Mrs. Buck informed me at the time of the requirement and complained earnestly of the trouble she was unnecessarily put to. I don't think I saw the deeds as drawn until long afterwards.

Soon after her husband died, I think in the summer of 1870, she employed me to have his will probated and to attend to her business as executrix. Among other things, I was required to settle the partnership business with Mr. Drake, including the disposition of the mules and other personalty and of the crop or crops raised on the place. While this was pending she informed me that Col. Pindall, a lawyer at Napoleon, had sent her word that he thought he could beat Mr. Drake out of any interest in the place, and would undertake it for a contingent fee; that she had replied that she did not wish to beat him out of it, as her husband had sold to him in good faith; all she wanted was to have him settle in accordance with the agreement made in her husband's lifetime. I commended her
64 for the answer she had made and told her that I did not think she could beat Drake if she were to try.

She acted for years deliberately and advisedly upon the theory that half of the tract was hers and half belonged to Drake, or his grantee, Winfrey. The latter purchased and took possession of Drake's interest without opposition from her, and when in the spring of the year 1872 the sheriff levied an execution upon part of the land as the property of Johnson she and Drake employed me to file a bill in the circuit court of that county enjoining the sale and for the correction of the deeds of conveyance under which they held, so as to show title thereto in themselves, or rather in Winfrey, as the grantee of Drake. They gave bond, and, as I now remember, the bill was sworn to by her. The supreme court finally adjudged in their favor, made the injunction perpetual, corrected the deeds,

and decreed the title to herself and Winfrey If desired I will file a copy of that decree as an exhibit to this deposition.

Winfrey had filed a bill in the chancery court at Memphis
65 term to compel Drake to rescind his purchase, which was pending in the supreme court of Tennessee on appeal at the time the Arkansas supreme court decreed as above requiring Winfrey to accept Drake's title, upon which I saw Col. McKisseck, Winfrey's counsel, showed him a copy of the decree, and told him that if necessary I would file an original bill to compel Winfrey to accept it. He took it under consideration, and in a few days after told me he was satisfied and had written Winfrey that he could be compelled to accept, and advised him to do so. He added that Winfrey had gone into bankruptcy, and he thought there would be very little trouble about it. I think he advised me to communicate with Winfrey's assignee in bankruptcy; at all events, I did so; told him of the proceedings in Arkansas, offered to furnish him a copy, and offered to pay costs if he would quitclaim to us. (I will attach my letter-press copy of my letter of January 16, '79, as an exhibit, if desired.) His reply suggested the propriety of a sale, and suggested that it would perhaps sell very low, which was made accordingly and I purchased, and the title was made to me, as shown in the exhibits to the bill. After my
66 purchase and while I owned the property the case was reached in the Tennessee supreme court and submitted without argument by myself and Winfrey's former counsel, to see what would be the ruling upon the legal questions involved, it being understood at the time that nothing would be done under the decision. That decree "affirmed the decree below with costs, but upon condition that complainant within a reasonable time make a deed of reconveyance of the land, duly probated for registration, according to the laws of Arkansas," which was never done. Winfrey has not tendered anything; his assignee in bankruptcy did not become a party. I held the legal title and arranged the matter as above stated, so that in fact the suit for re-cis-ion in the Tennessee chancery court never amounted to anything.

While that suit was pending Mr. Drake wanted either to borrow money of complainant, Mr. Hunt, or to get him as security upon some of his paper, and got him — consult me as to the value of his interest in the property involved in this controversy, and I expressed the opinion that it was ample to ensure him against
67 loss, upon which he acted. I afterwards sold the property to Hunt, at Drake's request, for the amount of my fee, because of Drake's indebtedness to him as aforesaid. The amount was shown me at the time on his books and amounted to between 3 and $4,000, as I now remember.

While Winfrey was in possession of his half of the property he allowed the gin-house and much of the fencing to be destroyed by fire, Mrs. Blackburn thought, and there seemed to be reason to believe it, the result of great carelessness. She suffered from it greatly, both pecuniarily and from the annoyance incident thereto.

Some time after this he abandoned the place and went into bankruptcy.

So far as I knew, Mrs. Blackburn never seriously contemplated resisting or denying the Drake interest until after the burning of the gin-house, nor then, until persuaded thereto by others. After I sold to Mr. Hunt I visited the place at his request and she offered me part, but not half of the place for him, stating that she had not cultivated that part of it for years, and was not responsible for its rent. I objected to the terms, but told her that Mr. Hunt instructed me to allow her the advantage in a division, but not
68 so much as she demanded. She requested me to see him again about it, which I did, and advised her through her agent, def't, C. R. Blackburn, that the offer I had made was the limit of concession, and he, in her behalf, declined it.

He has rented from her two or three years, with full notice from me that he would be held to account for a half interest in the rental.

Cross-examination:

Were you the attorney of the defendant then, Mrs. Buck, in the administration of her husband's estate, and in relation to her business in Arkansas? And, if so, state when that relationship commenced.

She employed me to have her husband's will probated a few weeks after he died, and to attend to the settlement of his estate. Subsequently she got me to bring the suits in which I represented her.

Have you not, since the death of W. A. Buck, attended to all her legal business until after the purchase by you of the Winfrey interest?

69 I have been her attorney most of the time referred to. She consulted Mr. Carlton regarding this matter some time prior to the purchase referred to. This consultation was probably in '76; of the date I am not certain; nor did I understand that she then determined to claim the land as her own, but only that she was considering it. I don't think she has had any other attorney than myself, except in this matter, but a very large number of counsellors at all times.

Can you name the counsellors referred to?

Not near all of them; but Messrs. Stephens, C. H. & C. B. Blackburn, Dr. Blackburn, Mr. Shepard, Maj. Carlton; and the opinion of Col. Pindall has been quoted to me by her, as well as others. None of the above are lawyers except Maj. Carlton and Col. Pindall. I don't think she saw the latter, but was only informed of his opinion. Mr. McCain, Maj. Carlton's surviving partner, also examined the matter. Mr. McCain's investigation was very soon after Carlton's death, which was, I am told, in the fall of '78.

70 Did not Mrs. Buck rely entirely upon your advice and act upon it in regard to all matters connected with her husband's estate?

Mainly; yes; but not entirely; notably in the settlement of the partnership with Mr. Drake, which she insisted on having her own way, and it was done as she wished it.

Do you know of her consulting any attorney other than yourself, or of her employing any other attorney in regard to any of her legal business in Arkansas until about the fall of 1875? If so, state the names of such attorneys.

None whatever, but she told me at the time stated in chief of the opinion of another.

Did you ever advise her that under the deed from Shepard to Buck & wife, after the death of her husband, she took an estate entirely in the plantation described in said deed?

I did not, for the reason that when she mentioned the subject to me she stated that she had declined to entertain the matter, and I expressed the opinion then that if the matter was litigated
71 the whole subject would be brought out, and in that event I thought she would be beaten.

When did the conversation alluded to in your last answer take place?

I can't state positively, but my impression is—and of that I feel quite sure—that it was on the steamer en route from Laconia to Memphis, where she went to make settlement with Mr. Drake; I think in '71 or '72; it is possible that it was later, but the above is my memory.

Did you not make or aid her to make the inventory of her husband's estate which was filed in the probate court of Desha county, and when was that inventory filed?

I don't now remember, not having seen it for many years; I have no doubt that I approved it, and that it was made a few months after his death. He died, I think, Aug., '70.

When was the suit of Sallie S. Buck *vs.* The Heirs of W. A. Buck filed? Were you the attorney? Who instituted that suit?

The transcript attached to the bill is marked filed March 11, 1872, which, I suppose, is correct. I was the attorney.

72 Was the conversation alluded to as having taken place on the steamer before or after the complaint was filed in that case?

My very decided opinion is that it was prior thereto, but am not positive.

W. G. WEATHERFORD.

Sworn to this April 25, 1883.

HENRY C. CALDWELL,
U. S. Dist. Judge.

Endorsed: Filed October 10th, 1883. Samuel I. Clark, clerk.

Deposition of J. S. Drake.

In the U. S. Court, Helena, Ark.

C. P. HUNT *vs.* S. S. BLACKBURN *et als.*

1. When, if ever, did you purchase part of a plantation near Loconia, Ark., and who from?

In the year 1869; from Walter A. Buck; an undivided half of the tract on which he was then residing, the tract containing about 960 acres.

2. Who drew your deed thereto; what do remember, if anything, regarding it?

73 I had it drawn at Memphis by Wm. Messick, Esq., and he objected to its acknowledgment before a justice of the peace and required W. A. Buck & wife to go to Napoleon and acknowledge it before the clerk. My impression is that he redrew the one from Shepard to Buck or Buck & wife, but of this I am not particularly certain.

3. Did you pay cash for the property, or part cash and get time on balance; if the latter, to whom did you finish paying?

I paid cash, and note for balance; made last payment to Mrs. Sallie A. Buck, executrix of W. A. Buck.

4. What did you do with the property, and how long did you hold it?

Buck & Drake farmed it in partnership. After his death I rented my part to Hobbs & Blackburn. Settled up the partnership business with Mrs. Buck, including mules, utensils, crops, &c., in Feb'y, '73. I sold to Mr. Winfrey and placed him in possession of my interest. Soon after that, he filed a bill to rescind the contract

74 in the chancery court at Memphis, and Mrs. Blackburn & myself filed one in Arkansas to correct the deeds and compel him to accept my title. We gained it in the Arkansas supreme court. In Tennessee, Mr. Winfrey went into bankruptcy. His interest was sold by his assignee and bought by W. G. Weatherford, who at my request sold to C. P. Hunt. Just before going into bankruptcy Mr. Winfrey abandoned the place in Arkansas.

5. Why did Mr. Hunt purchase it?

He had, at my request, become my surety; I having requested him to consult Mr. Weatherford as to my interest in that property, and upon his opinion Mr. Hunt acted. Afterwards I requested Mr. Weatherford, who was then my attorney, to buy the property and sell to Mr. Hunt, so as to protect the latter.

6. When, if at all, did Mrs. Blackburn deny your title to this property or demand it of you?

She never did.

J. S. DRAKE.

Sworn to and subscribed before me this 23d day of April, 1883.
[Commissioner's Seal.]

J. M. COLEMAN,
Commissioner for the State of Arkansas.

75 Endorsed: Filed Oct. 10th, 1883. Samuel I. Clark, clerk.

Supplemental Deposition of W. G. Weatherford for Compl't.

U. S. Court, Helena, Ark.

HUNT *vs.* BLACKBURN.

I was surprised at part of the deposition of Mrs. Blackburn; have since made search among her letters, part of which were not then in my possession, and from them I find, and such is my recollection, she employed me August 16, '70, by letter, which is attached, in settling up her husband's estate.

Aug. 25, '70, she wrote me, in reply to mine written in answer to the above, "The half of the place should by rights be mine, but I am fearful the deeds are made in such a way I will not be able to hold it. The original deed was made from Mr. Shepard to Mr. Buck & myself. Mr. B. sold his half to Mr. Drake, but I do
76 not think the deed states this fact; I can prove it, though, by four persons, and have also in my possession the deed you drew up and the agreements between Mr. Shepard and myself." The letter is attached."

My recollection is that in addition to the agreement between herself and Shepard exhibited with the papers I drew another, more clearly indicating the portion she was to have—the upper half—to which two agreements she evidently makes reference. The deed drawn by myself to herself and husband was then in her possession and should be now. Under that title he sold to Drake. Its exact terms I am unable to recall, but cannot divest myself of the conviction that the separate interests were recognized. I attach her letter of July 6, '75, calling for it, and July 14, '75, I wrote her (I copy from the letter-press copy), "I enclose the old Shephard deed that you remember handing me."

March 13, '72, she wrote me, with copy of sh'ff's notice of sale, upon which the Buck & Drake Randolph suit was based. In
77 that letter she refers to the fact that "Leeta" and the other children of her husband by a former marriage had had Col. Pindall employed to find flaws and give her trouble, &c. This Leeta or Letitia was the wife of Vauter. Vauter, I think, was the name—an old army comrade of Col. Pindall—about whom both himself and Mrs. B. spoke to me. I am as positive as I can be of anything of the kind that Col. P.'s investigation was in that interest and prior to the Winfrey purchase.

Febr'y 9, '73, she wrote that the fence was gone and the place gone to rack; that she was desperate, and that Drake had best compromise with Winfrey or take the place back. I attach the letter.

April 14, '75, she wrote that she was in possession and intended

to hold until Drake & Winfrey settle and she knows who it belongs to and she can have a permanent division. I attach that letter; am familiar with her handwriting, and recognize them all as hers. I would not introduce her correspondence, but she has, under advice of counsel, arraigned me—forgotten facts, as I suppose, and
78 I think I may of right correct her.

W. G. WEATHERFORD.

W. G. Weatherford states on oath that the matters stated in the foregoing deposition are true so far as stated on his own information, and the rest he believes to be true.

W. G. WEATHERFORD.

Sworn to and subscribed before the undersigned, com'r for Arkansas, at office, May 3, '83.

[SEAL.]

J. P. YOUNG,
Commissioner for Arkansas.

GEORGETOWN, KY., *August* 16.

Mr. W. G. Weatherford.

DEAR SIR: I would be greatly obliged if you would act as my lawyer in settling up Mr. Buck's estate. Write me how soon it will be necessary for me to come South, & what will it be necessary for me to do in getting out letters of administration, how soon, &c.

I suppose you have heard of my sad loss, &c.

Let me hear from you as soon as possible & oblige,

Respectfully yours,

79 S. S. BUCK.

Care R. Wells, Jeffersonville, Ind.

JEFFERSONVILLE, IND., *August 25th.*

Mr. Wm. G. Weatherford.

DEAR SIR: I thank you for answering my letter so promptly, also for your kind invitation to visit you. I would prefer not returning South before November, if possible, on account of my own & my children's health, as we have been having chills. I am very much satisfied with all I know of the management of the place just now, & if Mr. Drake goes down before any cotton is shipped I think it will be all right. If you think it best I should return sooner, of course you will let me know. If you will write out the bond I will be required to sign, I will do so and can give security in northern Ills. or at Laconia, which ever you think best. I am anxious to get the letters of administration, for fear others may apply

80 The names of Mr. B.'s children are as follows: Charles, Letitia, Lewis, Hale, Walter, Alvis, Mary, Lulu, Frank, Belle, and William.

Mr. B. thought the half of the place, together with the cattle & mules, worth eighteen thousand dollars.

The half of the place should by rights be mine, but I am fearful the deeds are made in such a way I will not be able to hold it. The original deed from Mr. Shepard was made to Mr. B. and myself. Mr. B. sold his half to Mr. Drake, but I do not think the deed states

this fact. I can prove it, though, by four persons, & have also in my possession the deed you drew up & the agreement between Mr. Shepard and myself.

You had best examine the deeds on record at Napoleon. If I cannot hold the half of the place I will file an old will of Mr. B.'s, which leaves me some seven thousand dollars in lieu of my dower. This will was made before we moved South. I have tried to be very explicit and explain fully. Mr. B. told me to stay on the place & try & save it, and evidently thought I would be able to hold it.
81 I want to do what is right, & if Mr. B.'s first children are disposed to do right will do all I can for them. I hope, if any one questions you about the business, you will let them know as little as possible. I leave here on the 30th for Ills., &, if you think it necessary to write after that time, address me as given below. Remember me to Mrs. W. I am,

Respectfully yours,

S. S. BUCK,
Care W. L. Gordon, Polo, Ills.

LACONIA, ARK., *July* 6, 1875.

Mr. Weatherford:

Please send me by return mail the deed from Mr. Shepard to Mr. Buck & myself, also Mr. Drake's deed. I think I gave them to you & would now like to see them. Of course, if you need them, I can return — to you. I would like them as soon as possible. Mrs. Stevens & I have been having a little discussion about them. I have been sick, also one of the children; no news in the
82 n-ig-borhood. With kind regards for yourself & Mrs. W., am sincerely

Your friend, S. S. BLACKBURN.

Endorsed: Mrs. S. S. Blackburn, Laconia, Ark., 6 July, '75. Repl'd to 14th. See copy.

Sheriff's Sale.

By virtue of a certain execution to me directed from the office of the clerk of the circuit court of Desha county in favor of David W. Randolph, as surviving partner of late firm of J. J. Neiden & Co., and against Henry J. Johnson, I have levied upon & will on the 20 day of April, A. D. 1872, at the court-house door in said county, at Napoleon, Ark., between the hours for judicial sales, sell to the highest bidder, on a credit of three months, the following real estate property, to wit:

The southeast fractional quarter of section twenty (20), township seven (7), S. range (1) one east, containing 188.45 acres, or so much thereof as will satisfy said execution and costs; the purchaser to give bond — approved security, and in case of default of
83 the payment the bond to have the force and effect of a judgement at law.

A. A. EDRINGTON,
Sheriff of Desha Co., Ark.,
By DORAN, *D. S.*

Tate, trustee, adv. Post, Memphis, 15 Jan., '68, to sell 18 Febr.

N. E. fr'l 20	193 acres.
E. ½ S. W. 20	79 a.
W. fr'l ½ 21	301
N. W. 28	
N. E. 29	
E. ½ N. W. 29	400
Total No.	973

Mr. WEATHERFORD: Enclosed find a correct copy of an execution gotten out against the lands the gin stands on. Can you find no flaw or anything by which you can stop the execution? Of course, if not, I will have Charlie on hand to bid for me. When Judge Randolph surveyed the place he found by some mistake we had not been paying taxes on that land & he reported it to Mr. Pindle, & you know Hale & the other children have been employing Mr. Pindle to find flaws & give me all the trouble possible. Please answer by
84 return boat & tell me what you think best & what you will do in the matter. I know & believe you will do the best you can, but, as the thing now stands, of course, I am very anxious & uneasy.

Hoping to have a satisfactory answer by return boat, I am,
Truly, S. S. BUCK.

IONIA PLANTATION, *Mar.* 13, 1872.

Do you think it will be necessary to go down & see Henry Johnson?

Endorsed: Mrs. S. S. Buck, Laconia, Ark., 13 Mar., 1872. Replied to 19 do.

LACONIA, ARKANSAS, *April 14th*, 1875.

Mr. WEATHERFORD: Your letter was received some time since. It is Mr. Drake's half of the place that has been sold for taxes & not mine. I think Mr. Winfrey has given up all idea of having anything to do with the place, as they have all left here, & I am in possession, and never intend to give it up until Drake &
85 Winfrey settle, and I know to a certainty who it belongs to, so I can have a permanent division. I am having rails made so as to fence my half when I know where it is. When does court sit again? I do hope my case will then be decided. I would like to have my half of the house insured, also my furniture. Can you tell me which insurance company you think the most reliable, & what it would cost? I should think my interest in the house worth eight hundred dollars & my furniture, carpets, books, &c., worth three thousand. There are so few hands on the place to help save anything in case of fire that I should feel safer if it was insured. I hope it will put you to no inconvenience to find these things for me. Remember me to Mrs. W., & Cricket sends her love to Susie. Come & see us when you can, & believe me,

Sincerely your friend, S. S. BLACKBURN.

Endorsed: Mrs. S. S. Blackburn, Laconia, Ark. April 14, '75. Repl'd to 26 Ap'l, '78.

The deposition was endorsed. Filed Oct. 10, 1883. Samuel J. Clark, clerk.

86 EXHIBIT F TO BILL.

Tax Deed.

Whereas on the 16th day of September, 1872, J. A. Robinson, assessor for the county of Desha and State of Arkansas, did file in the office of the county clerk an assessment of all the lands and town lots in said county, in manner and form as provided by law; and

Whereas on the 31st day of December, 1872, James Murphy, county clerk of said county, did deliver to the collector of said county the tax books for the year 1872, embracing all of said lands, with the amount of taxes which had been duly and legally levied extended thereon, together with the warrant provided by law, requiring said collector to proceed to collect said taxes, as required and prescribed by law; and said collector having died, R. E. Doran, then county clerk, delivered said tax books, with the warrant provided by law, to E. Randolph, the then collector of taxes, on the 14th day of January, 1873, requiring him to proceed to collect said taxes in the manner provided by law; and

87 Whereas the subdivided ½ of the following tracts of land, to wit, the S. E. ¼ of the N. E. ¼ of section (20) twenty, 40 acres; the northeast fractional section (29) twenty-nine, 60 acres; the east half of the northwest fr'l section (20) twenty, 40 acres; the northeast quarter of the northeast fr'l quarter of section (20), twenty, 22.57 —; the east fr'l half of the southwest quarter of section (20) twenty, 33.15 —; the west fr'l half of the northeast quarter of section (20) twenty, 80.76 —; the northwest fr'l quarter of section (21) twenty-one, 73.56 acres; the southwest fr'l quarter of section (21) twenty-one, 80 acres; the northwest fr'l quarter of section (28) twenty-eight, 80 acres; the east fr'l half of the northwest quarter of section (29) twenty-nine, 40 acres, all in township (7) seven south, range (1) one east, in said county, were entered, listed, and assessed for taxation in the name of W. A. Buck for the year 1872, and neither the owner nor any other person having paid the taxes upon said several parcels, or any of them, levied as aforesaid, amounting to the respective sums in the parcels in the order named above, to wit: For the parcel first named, $1.50; second, $16.80; third,

88 $3.00; fourth, $2.42; fifth, $8.96; sixth, $2.60; seventh, $42.30; eighth, $28.10; ninth, $20.25; tenth, $5.25. Therefore the said E. Randolph, collector, did, on the 5th day of May, 1873, return said several tracts of land as delinquent. Whereupon the said R. E. Doran, clerk of said county, caused said lands to be duly and legally advertised in the Helena Clarion, a newspaper published in the town of Helena, in said State, it being the official newspaper of said county, together with all the other de'inquent lands in said county, for two weeks, the first insertion being

on the 7th day of May and the last on the 14th day of May, that the said collector would sell at public auction at the court-house door, in said county, on the second Monday of June, 1873, the said several tracts of land for the taxes, together with 25 per centum penalty and costs thereon, and said collector accordingly did, at the place and time stated, proceed to sell the said several tracts and parcels of land for the said taxes, penalty, and costs, the same remaining wholly due and unpaid; and said collector having been engaged in selling other delinquent lands on said 2d Monday, the said
89 sale was continued until the 10th day of June (the day following), on which last-mentioned day the said several tracts were then and there severally offered by said collector at public sale, when and where they and each of them were struck off to and purchased by Joe Craig for the several amounts of taxes due upon them, respectively, with 25 per centum penalty thereupon, together with $2.20 costs per tract each, he being the highest and best bidder therefor and no one offering to pay the said costs, penalties, and taxes upon either or any of said places for a less quantity thereof; and the said Craig having then and there paid to said collector the several sums of money so due and owing as aforesaid, and he having delivered to said Craig certificates of sale of said premises in consideration thereof, and the full term of two years having expired since the said day of sale, and the said several tracts of land remaining unredeemed, and the said certificates of purchase being to me produced, and the same and each of them having
90 been duly assigned by said Craig to E. Randolph, and by him to C. P. Hunt, and the said Hunt having demanded of the undersigned, clerk of the Desha circuit court, a deed conveying title to said several tracts of land:

Now, therefore, in consideration of the premises, I, the said J. P. Jones, clerk as aforesaid, in consideration of the premises, do, by virtue of the powers conferred upon me by law, hereby sell, transfer, and convey to the said C. P. Hunt the said several tracts and parcels of land above described, to have and to hold to him and to his heirs and assigns forever.

The clause relating to the delivery of the tax book to E. Randolph, collector, after the death of the former collector on first page, and that reciting that the sale and advertisement was of an undivided half of the lands mentioned interlined before signing.

In testimony whereof I hereto set my hand as such clerk, at office, this Sept. 16, 1867.

J. P. JONES,
Clerk & ex Officio Recorder.

91 STATE OF ARKANSAS, *County of Desha:*

Personally appeared before the undersigned, J. L. Baldwin, justice of the peace in and for the county & State aforesaid, J. P. Jones, clerk of the circuit court of said county, to me well known, who acknowledged that he had executed the foregoing deed of conveyance for the uses, purposes, and considerations therein set forth.

In testimony whereof I hereto set my hand as such justice this the 16th day of September, 1876.

J. L. BALDWIN, *J. P.*

Endorsed: Filed for record Sept. 21, 1877. J. P. Jones, clerk; John G. Warfield, D. C.

STATE OF ARKANSAS, *County of Desha:*

I, J. P. Jones, clerk of the circuit court and *ex officio* recorder, within and for the said county of Desha and State aforesaid, do hereby certify that annexed instrument of writing was filed
92 in my office for record on the 21st day of September, A. D. 1877, and that the same is now duly recorded in record B. 3, pages 346, '47, '48, '49.

In testimony whereof I have hereunto set my hand and official seal, at my office, this the 28th day of February, A. D. 1878.

J. P. JONES, *Clerk.*

[SEAL.] JNO. G. WARFIELD, *Deputy Clerk.*

Endorsed: Filed June 25, 1881. Samuel I. Clark, clerk.

93 In the Circuit Court of U. S.

C. P. HUNT *v.* SALLIE S. BLACKBURN *et al.*

The defendant, Sallie S. Blackburn, moves to suppress the two depositions of W. G. Weatherford, Esq., on file with the papers in this cause, because, as she shows to the court, said depositions related to and purport to be evidence, admissions, and conversations made by said defendant to said witness, and of evidence obtained by said witness when acting as her attorney and confidential adviser, and that said supposed admissions and communications were privileged by public policy and professional propriety.

JNO. A. WILLIAMS &
L. A. PINDALL, *For Def't.*

Endorsed: Filed October 10th, 1883. Samuel I. Clark, clerk.

94 On the 10th day of March, 1884, while the court was in session, the following order was entered:

CLARENCE P. HUNT *vs.* S. S. BLACKBURN *et al.*

This cause having been heretofore argued by counsel and submitted to the court on the original bill and exhibits, the answer and exhibits, the deposition of J. S. Drake, & the two depositions of W. G. Weatherford, on the part of the complainant, subject to the motion to strike out the last two depositions, and the deposition of defendant, Sallie S. Blackburn, on part of the defendant, said depositions all being taken by consent and read subject to all just exceptions for irrelevancy or incompetency only, and the record of the Desha circuit court in the case of Blackburn *vs.* D. W. Randolph *et al.*

read by consent, and the court having considered the same, doth find there is no equity in said bill, and doth dismiss the same.

And it is further ordered, adjudged, and decreed that the
95 said defendant recover of and from the plaintiff all her costs about this defense in this behalf laid out and expended.

This cause having been argued and submitted previous to the last term of this court and decided by the court at the last term thereof, and the decree then rendered not having been entered of record at said term by inadvertence:

It is, therefore, further ordered, adjudged, and decreed that the decree dismissing said bill at the cost of the complainant be now entered as of the last day of the October term, 1883, the day on which it was rendered, to wit, the 11th day of October, 1883, *nunc pro tunc;* whereupon the complainant prays an appeal to the Supreme Court of the United States, which is granted.

Costs:

Clerk	$34 40
Marshal	16 20
Docket	20 00
Total	$70 60

96 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Samuel I. Clark, clerk of the United States district court for the eastern district of Arkansas, at Helena, hereby certify that the above and foregoing 106 pages contain, under the agreement of counsel filed in the cause, a true and perfect transcript of the proceedings in the above-entitled cause as they remain on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Helena, this 22d day of October, A. D. 1884.

[Seal of the United States Court, Eastern District Arkansas, Helena.]

SAMUEL I. CLARK,
Clerk United States District Court.

Endorsed on cover: E. Arkansas D. C. U. S. No. 199. Clarence P. Hunt, appellant, *vs.* Sallie S. Blackburn, Charles B. Blackburn, & W. P. Smith. Filed January 13, 1885.

U. S. SUPREME COURT, WASHINGTON, D. C. OCT. TERM, 1887.

C. P. HUNT
v.
S. S. BLACKBURN *et al.* } #199.

In this cause it is agreed by the counsel of the respective parties that a stipulation of counsel was filed in the court below under which the clerk was authorized to describe instead of copy the exhibits referred to in the pleadings, which was done, and that this is satisfactory to the parties now.

It is also agreed that the clerk of the court below may copy and certify to the clerk of this Court the deed of W. A. Buck and S. S. Buck, his wife, to J. S. Drake, dated January —, 1869, and that the same may be printed as a supplement to the transcript.

JNO. A. WILLIAMS,
Counsel for Appellee.
J. B. HEISKELL,
For Appellant.

EXHIBIT A No. 2.

C. P. HUNT
v.
S. S. BLACKBURN *et al.* } 199.

This indenture, made and entered into this second day of January, in the year of our Lord one thousand eight hundred and sixty-nine, between Walter A. Buck and Sallie S. Buck, his wife, of the county of Desha and State of Arkansas, of the first part, and Jonathan S. Drake, of the county of Shelby and State of Tennessee, witnesseth:

That the party of the first part, for and in consideration of fifty-nine hundred dollars to them paid by the party of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, convey, and confirm, unto the party of the second part and his heirs in fee simple forever one undivided half of certain lots or tracts of land situate, lying, and being in the county of Desha and State of Arkansas, known and described as follows, to wit: Being the northeast fractional section twenty (20), the east half of the southwest quarter of section twenty (20), the west fractional half of section twenty-one (21), the northwest quarter of section twenty-eight (28), the northeast quarter of section twenty-nine (29), and the east half of the northwest quarter (E. ½ N. W. ¼) of section twenty-nine (29), all in township seven (7) south, range one (1) east, in the county and State aforesaid, and containing altogether nine hundred and seventy-three acres, together with the equitable interest in a certain house and lot, in the city of Memphis, conveyed by Mrs. J. P. Blackburn to C. R. Shepard, trustee, &c., and by Shepard, trustee,

&c., to R. S. Barritell, upon which equitable interest a lien was retained, to secure perfect title to the above-described property, by Shepard, which lien was transferred to Buck & wife by the said Shepard, trustee, and which is now transferred to J. S. Drake in as full a manner as we, the first party, have the right therein and thereto. Twenty-nine hundred and fifty dollars paid in cash and a note at twelve months from date is made, with lien herein retained, for $2,950.00:

To have and to hold the above-described land and premises, together with all and singular the rights and privileges, buildings, improvements, and appurtenances on, in, or to the same belonging or in anywise appertaining, unto the party of the second part and his heirs forever.

And the party of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant to and with the party of the second part and his heirs that they are lawfully seized in fee of the aforegranted land and premises; that the same are free from all incumbrances; that they have good right to sell and convey the same as aforesaid, and that they forever warrant and defend the title and quiet possession of the aforesaid land and premises and every part thereof unto the party of the second part against the right of all and every person whomsoever.

It is agreed between the parties that if any recovery is had in a suit now pending in the court of chancery in Desha county, Arkansas, wherein W. Harry Graddy is complainant and Harry J. Johnson def't, and it results as an incumbrance upon this property, the first party are only liable to the extent of their one-half interest in said lands and the second party takes subject to this liability.

In testimony whereof the party of the *party of the* first part have hereunto set their hands and seals.

W. A. BUCK. [SEAL.]
S. S. BUCK. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM SMITH,
J. P., Mississippi Township.

[Revenue stamps, $6.00.]

STATE OF ARKANSAS, }
County of Desha, } ss:

On this 11 day of January, A. D. 1869, before me, James Murphy, clerk of the circuit court in and for said county, appeared in person Walter A. Buck, to me personally well known to be the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me Sallie S. Buck, wife to the said Walter A. Buck, to me personally well known to be the person whose name appears upon the

within and foregoing deed, and in the absence of her said husband stated that she had of her own free will signed and sealed the relinquishment of dower therein expressed for the purposes therein contained and set forth without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand as such clerk and seal of said court, at my office, in the county and State aforesaid, this 11th day of January, A. D. 1869.

[SEAL.] JAMES MURPHY, *Clerk*,
By J. M. PINNELL, *D. C.*

STATE OF ARKANSAS, }
County of Desha, } *ss:*

I, James Murphy, clerk of the circuit court and *ex officio* recorder of and for said county, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 11th day of January, A. D. 1869, and the same is now duly recorded in Record Book B, 1868, on pages 311 & '13.

In testimony whereof I have hereunto set my hand as such clerk and the seal of said court, at office, this 11th day of January, A. D. 1869.

[SEAL.] JAMES MURPHY, *Clerk*,
By JASPER M. PINNELL, *D. C.*

Certificate of record.

Endorsed: Warranty deed from Walter A. Buck & Sallie S. Buck to J. S. Drake. Filed for record January 11, 1869. Jas. Murphy, clerk, by J. M. Pinnell, D. C. Marked Exhibit A No. 2. Hunt *vs.* Blackburn *et als.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Samuel I. Clark, clerk of the district court of the United States in and for the district aforesaid, do hereby certify that the above and foregoing six pages contain a true and perfect transcript of the original deed from W. A. Buck and Sallie S. Buck to J. S. Drake filed as an exhibit in the cause of Clarence P. Hunt *vs.* Sallie S. Blackburn as the same remains on file in my office.

In testimony whereof I have hereto set my hand and seal of said court this the 8th day of December, 1887.

SAMUEL I. CLARK, *Clerk.*

[Endorsed:] Supreme Court U. S. 1887, October term. No. 199. Clarence P. Hunt, app't, *vs.* Sallie S. Blackburn & *al.* Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Dec. 15, 1887. James H. McKenney, clerk.

U. S. SUPREME COURT, WASHINGTON, D. C. OCT. TERM, 1887.

C. P. HUNT
v.
S. S. BLACKBURN *et al.* } #199.

In this cause it is agreed by the counsel of the respective parties that a stipulation of counsel was filed in the court below under which the clerk was authorized to describe instead of copy the exhibits referred to in the pleadings, which was done, and that this is satisfactory to the parties now.

It is also agreed that the clerk of the court below may copy and certify to the clerk of this Court the deed of W. A. Buck and S. S. Buck, his wife, to J. S. Drake, dated January —, 1869, and that the same may be printed as a supplement to the transcript.

JNO. A. WILLIAMS,
Counsel for Appellee.
J. B. HEISKELL,
For Appellant.

EXHIBIT A No. 2.

C. P. HUNT
v.
S. S. BLACKBURN *et al.* } 199.

This indenture, made and entered into this second day of January, in the year of our Lord one thousand eight hundred and sixty-nine, between Walter A. Buck and Sallie S. Buck, his wife, of the county of Desha and State of Arkansas, of the first part, and Jonathan S. Drake, of the county of Shelby and State of Tennessee, witnesseth:

That the party of the first part, for and in consideration of fifty-nine hundred dollars to them paid by the party of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, convey, and confirm, unto the party of the second part and his heirs in fee simple forever one undivided half of certain lots or tracts of land situate, lying, and being in the county of Desha and State of Arkansas, known and described as follows, to wit: Being the northeast fractional section twenty (20), the east half of the southwest quarter of section twenty (20), the west fractional half of section twenty-one (21), the northwest quarter of section twenty-eight (28), the northeast quarter of section twenty-nine (29), and the east half of the northwest quarter (E. ½ N. W. ¼) of section twenty-nine (29), all in township seven (7) south, range one (1) east, in the county and State aforesaid, and containing altogether nine hundred and seventy-three acres, together with the equitable interest in a certain house and lot, in the city of Memphis, conveyed by Mrs. J. P. Blackburn to C. R. Shepard, trustee, &c., and by Shepard, trustee,

&c., to R. S. Barritell, upon which equitable interest a lien was retained, to secure perfect title to the above-described property, by Shepard, which lien was transferred to Buck & wife by the said Shepard, trustee, and which is now transferred to J. S. Drake in as full a manner as we, the first party, have the right therein and thereto. Twenty-nine hundred and fifty dollars paid in cash and a note at twelve months from date is made, with lien herein retained, for $2,950.00:

To have and to hold the above-described land and premises, together with all and singular the rights and privileges, buildings, improvements, and appurtenances on, in, or to the same belonging or in anywise appertaining, unto the party of the second part and his heirs forever.

And the party of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant to and with the party of the second part and his heirs that they are lawfully seized in fee of the aforegranted land and premises; that the same are free from all incumbrances; that they have good right to sell and convey the same as aforesaid, and that they forever warrant and defend the title and quiet possession of the aforesaid land and premises and every part thereof unto the party of the second part against the right of all and every person whomsoever.

It is agreed between the parties that if any recovery is had in a suit now pending in the court of chancery in Desha county, Arkansas, wherein W. Harry Graddy is complainant and Harry J. Johnson def't, and it results as an incumbrance upon this property, the first party are only liable to the extent of their one-half interest in said lands and the second party takes subject to this liability.

In testimony whereof the party of the *party of the* first part have hereunto set their hands and seals.

W. A. BUCK. [SEAL.]
S. S. BUCK. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM SMITH,
J. P., Mississippi Township.

[Revenue stamps, $6.00.]

STATE OF ARKANSAS, }
County of Desha, } *ss:*

On this 11 day of January, A. D. 1869, before me, James Murphy, clerk of the circuit court in and for said county, appeared in person Walter A. Buck, to me personally well known to be the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me Sallie S. Buck, wife to the said Walter A. Buck, to me personally well known to be the person whose name appears upon the

within and foregoing deed, and in the absence of her said husband stated that she had of her own free will signed and sealed the relinquishment of dower therein expressed for the purposes therein contained and set forth without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand as such clerk and seal of said court, at my office, in the county and State aforesaid, this 11th day of January, A. D. 1869.

[SEAL.] JAMES MURPHY, *Clerk*,
By J. M. PINNELL, *D. C.*

STATE OF ARKANSAS, } ss:
County of Desha, }

I, James Murphy, clerk of the circuit court and *ex officio* recorder of and for said county, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 11th day of January, A. D. 1869, and the same is now duly recorded in Record Book B, 1868, on pages 311 & '13.

In testimony whereof I have hereunto set my hand as such clerk and the seal of said court, at office, this 11th day of January, A. D. 1869.

[SEAL.] JAMES MURPHY, *Clerk*,
By JASPER M. PINNELL, *D. C.*

Certificate of record.

Endorsed: Warranty deed from Walter A. Buck & Sallie S. Buck to J. S. Drake. Filed for record January 11, 1869. Jas. Murphy, clerk, by J. M. Pinnell, D. C. Marked Exhibit A No. 2. Hunt *vs.* Blackburn *et als.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Samuel I. Clark, clerk of the district court of the United States in and for the district aforesaid, do hereby certify that the above and foregoing six pages contain a true and perfect transcript of the original deed from W. A. Buck and Sallie S. Buck to J. S. Drake filed as an exhibit in the cause of Clarence P. Hunt *vs.* Sallie S. Blackburn as the same remains on file in my office.

In testimony whereof I have hereto set my hand and seal of said court this the 8th day of December, 1887.

SAMUEL I. CLARK, *Clerk.*

[Endorsed:] Supreme Court U. S. 1887, October term. No. 199. Clarence P. Hunt, app't, *vs.* Sallie S. Blackburn & *al.* Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Dec. 15, 1887. James H. McKenney, clerk.

IN THE

Supreme Court of the United States.

October Term 1887.

HUNT
vs.
BLACKBURN *et al.* } No. 199.

Motion to Reinstate Cause.

In this cause the appellant respectfully asks the court to set aside the order dismissing the appeal for want of proof in the record of the value of the matter in dispute, and to reinstate the cause and determine the same upon the merits.

This motion is based upon the fact that the undivided interest sued for in this cause is shown by the record to have sold for $5,900 in 1869, (See Supp'l Rec., p. 1,) and also upon the affidavits of C. P. Hunt, the appellant, J. S. Drake, the purchaser at that price, W. G. Weatherford, counsel below, and D. E. Myers, a wholly disinterested witness, and they clearly show the value of the matter in dispute to be not less than six or seven thousand dollars.

IN THE

Supreme Court of the United States.

October Term 1887.

CLARENCE P. HUNT
vs.
SALLIE S. BLACKBURN *et al.*

Clarence P. Hunt, being duly sworn, states that he is the appellant in the above-named case, and claims the one-half of the land sued for; that he has no personal knowledge of the property, but at the time he made the advances which are stated in the record he made careful inquiry into the value of the property, and satisfied himself that it was ample security for his advances, and, indeed, that it was of value exceeding five thousand dollars. Upon this information and belief he made the advances mentioned in the bill and the subsequent dealings, by which he became owner of that undivided interest; that since that time, and recently, he knows the fact that the levees around that section of country have been rebuilt and put in condition to protect the country, and he has been informed, and believes, that the whole place is, and was at the time of the decree and appeal, worth not less than $15,000, and that his interest therein is of value not less than $7,500; that he gets this valuation from adjoining owners, who have no reason to give affiant any information that is not true, and who are competent judges of the value of the property, and are fully acquainted with its location, quality, and condition.

UNITED STATES OF AMERICA,
Western District of Tennessee, } ss:

Personally appeared before me, the clerk of the United States Circuit Court, at Memphis, Tennessee, Clarence P. Hunt, who made oath in due form of law that the statements made in the foregoing affidavit as of his own knowledge are true, and those made upon information he believes to be true.

C. P. HUNT.

Sworn to and subscribed before me this 18th day of April, 1888.

[SEAL.] JOHN B. CLOUGH, *Clerk.*

In Supreme Court of the United States, Oct. Term 1887.

CLARENCE P. HUNT
vs.
SALLIE S. BLACKBURN *et als.* } No. 199.

J. S. Drake, being duly sworn, states that he is the J. S. Drake who purchased the land in controversy in this cause; that he bought the half-interest involved in this suit in January, 1869, as the deed states, at the price stated in the said deed, to wit, $5,900, in two payments, one cash in hand, the other in twelve months from date; that he then and now considered and considers the trade a good one, and believes the property to have been then of that value; that he has not known the property for years past, but that he does not know, nor has he ever heard of, the same having depreciated in value.

J. S. DRAKE.

Sworn to and subscribed before the undersigned, at office in Memphis, this 17th day of April, 1888.

Witness my hand and notarial seal the day and date above mentioned.

[SEAL.] TOM HOLEMAN,
Notary Public.

U. S. Supreme Court.

CLARENCE P. HUNT
vs.
SALLIE S. BLACKBURN *et al.* } No. 199.

W. G. Weatherford, being sworn, stated that he has known the land in controversy since the year 1860. For a year or two he lived on an adjoining plantation; saw it almost daily, and was thoroughly familiar with it, and since then has seen it from time to time, and is familiar with the value of it and property in its vicinity. It was selected and settled at an early day by one familiar with the country, because of its high and favorable location and extreme fertility. It has 275 to 300 acres cleared land, worth about forty dollars per acre, the annual rental of such land being from four to six dollars per acre. The unimproved land is worth about five dollars per acre. Altogether, it is safe to place the total value at $12,000 to $14,000. Half of it is readily worth the price of the whole, as it is susceptible of division without detriment to the whole.

W. G. WEATHERFORD.

Sworn to and subscribed before the undersigned notary public.

In testimony whereof, I hereto set my hand and notarial seal, at office in Memphis, Tenn., this April 19, 1888.

[SEAL.] HUNSDON CARY,
Notary Public.

In Sup. Court of the U. S., October Term 1887.

C. P. HUNT
vs.
SALLIE BLACKBURN *et al.* } No. 199.

D. E. Myers, being duly sworn, states that he owns and operates a plantation above Laconia Circle, in Desha county, Arkansas, about two or three miles from the Buck farm, the land in controversy; that he knows the property, having been over it repeatedly; that he has not examined it with a view to valuing the same, but he knows the same, and from its location and fertility and condition he is satisfied that it is worth $40 per acre for the cleared land and $5 per acre for the uncleared land.

D. E. MYERS.

STATE OF TENNESSEE, }
Shelly County. }

Personally appeared before me the above-named D. E. Myers, and made oath that the foregoing affidavit is true, to the best of his knowledge.

Witness my hand and official seal this 20th day of April, 1888.

[SEAL.]

TOM HOLEMAN.
Notary Public.

In the Supreme Court of the United States.

CLARENCE P. HUNT *v.* SALLIE S. BLACKBURN *et al.*

R. Bynum, being sworn, says he has lived in Desha county, Arkansas, almost continuously since 1859; that from that date till 1868 his father, F. W. Bynum, owned, and he resided with him on, the adjoining plantation to what is called the "Buck plantation," near Laconia, Desha Co., Ark's; that he has been upon said place often and is familiar with it, and that it contains over 300 acres of cleared land, and has ranged in value all the while and until now at from thirty to forty dollars per acre, and the unimproved land at from five to ten dollars per acre, and its rental, soon after the war, was $8 to $10.00 per acre, and from 15 to 20 years past at five or six dollars per acre.

Affiant is now and for some years past has been merchandising in said county.

R. BYNUM.

Sworn to and subscribed before the undergsined, notary public, at office, in Memphis, Tennessee, this Sept. 22, 1888.

[Seal H. Bendsdorf, Notary Public, Memphis, Shelby Co., Tenn.]

H. BENSDORF,
Notary Public.

[Endorsed:] Supreme Court U. S. 1888, Oct'r term. No. 16. Clarence P. Hunt, app't, *vs.* Sallie S. Blackburn *et al.* Affidavit of R. Bynum.

[Stamped:] Office Supreme Court U. S. Filed Sep. 28, 1888. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED.
APR 23 1888
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term 1887.

HUNT
vs.
BLACKBURN. } No. 199.

Brief on Motion to Reinstate.

In the case of the Pittsburg, &c., R. R. Co. *v.* Ramsey, 22 Wall., 322, the court, from the conduct of the parties, a record being lost and only imperfectly supplied, presumed the facts to give jurisdiction, and said:

"From what has occurred the conclusion is irresistible that they (the papers) must have contained all that was necessary to justify the court in accepting the transfer. This it need not have done, unless the jurisdiction was apparent. *Either party upon the filing of the papers could have moved to remand*, or the court itself could have sent the case back if the jurisdiction did not appear. As both the court and the parties accepted the transfer, it cannot for a moment be doubted that the files did then contain conclusive evidence of the existence of the jurisdictional facts."

Observe that here there was not much in the fact that the court below did not take notice of matters not specially called to its attention. There was much in the fact that the party did not move to dismiss. So far the case is pertinent here. The counsel below, who may well be presumed to know the value of the prop-

erty, make no motion to dismiss. If they knew or thought the property of less value than $5,000, they certainly would have made that motion here. But, knowing the facts, they have considered it needless to do so. If that motion had been made, we would, I think, at once have supplied the proofs, and would not have relied upon the fact of its actual sale for $5,900, shown in Supplemental Record, page 1, to which, as there was no motion, the court's attention was not called, and which has possibly escaped notice. I venture to submit that (unless this matter has been passed upon by the court) it, in the absence of a motion to dismiss, is evidence of the value of the property.

The case above cited is cited and approved in Bridges *v.* Sperry, 95 U. S., 401, where the facts did not appear, but the record not being complete, the court presumed that the facts had been made to appear.

Again, in Robertson *v.* Cease, 97 U. S., 646, this court remanded a cause, with leave to the plaintiff to amend, so as to show the jurisdictional facts.

This last case is cited in Bors *v.* Preston, 111 U. S., 263; and the jurisdiction of the court below not appearing, the case was remanded "for such further proceedings as may be consistent with this opinion," which it is presumed includes leave to prove the jurisdictional facts, the entry being in the same form as in Robertson *v.* Cease.

That case cites Morgan *v.* Gay, 19 Wall., 81, (86 U. S.,) as the precedent for this remand with leave to amend. This case was, however, preceded by *Ex-parte* Bradstreet, 7 Pet., 647, and in this last-named case the right of the party to give evidence here is expressly recognized by the court. (Pp. 647, 648.)

I deduce from these cases that the principle obtains in this court that, where jurisdiction in fact exists, the court will not allow other courts to defeat justice by

reason of any mere slip of counsel, or defect of the record, and that, *a fortiori*, it will not avail itself of any such defect or omission to the prejudice of justice. Such a rule is consistent with the enlightened jurisprudence of this age and country, and of course must have the sanction of this court.

This portion of the brief was prepared before I found the cases of Wells *v.* Wilkins and Johnson *v.* Wilkins, 118 U. S., 230 and 228, in which the court deny the motion on the ground of delay to make application to reinstate for three months from the order of dismissal. These cases seem to settle the matter. We have come on the second motion day after dismissal, only receiving the notice of the dismissal on the Friday before the first rule day.

No brief would have been deemed necessary on this motion but for a dictum of Mr. Phillips in his Practice, in which he says that a case will neither be postponed nor reinstated to give opportunity to file affidavits. His authorities by no means bear him out, and, indeed, the Grace Girdler, 6 Wall., 441, is so express to the contrary that it must have been a misprint of *neither* for *either*.

In that case the court, finding no evidence of value on a motion to dismiss, of their own motion allowed twenty days to file affidavits; and finding affidavits already on file which had been overlooked, denied the motion to dismiss. This is so express to the point that had it been examined at first no discussion of it would have been submitted.

J. B. HEISKELL.